Chapter 8-21 CODE ENFORCEMENT

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8-2101 Findings and determination.

The city council finds and determines as follows:

(a) Sections 8-2101 through 8-~~2118~~2115, inclusive, shall be known as the code enforcement ordinance.

(b) The purpose and intent of this chapter is to:

(1) Enhance and maintain the appearance of real property, both improved and unimproved, and by doing so, enhance and maintain the livability, appearance and economic well-being of the community;

(2) Ensure that property improvements and land uses permitted by the city pursuant to Title 6 are maintained in compliance with such permits;

(3) Utilize the sanctions and penalties of this chapter only after all reasonable efforts at resolution by educational and cooperative means have been exhausted, it being recognized that voluntary compliance is preferred over all other remedies; and

(4) Recover city costs for the abatement of violations.

(c) As described in this chapter, the use and abuse of real properties, whether improved or unimproved reasonably relate to the proper exercise of police power of the city to protect the health, safety and general welfare of the community.

ATTACHMENT 7

(d) The abatement of continued violations impacts city resources, requires resources over and above the level of enforcement services normally provided, and constitutes a public nuisance the costs of which should be paid by the responsible property owners.

(e) This chapter is enacted under the authority of California Government Code Sections 36901 and 53069.4.

(f) The procedures set forth in this chapter for abatement, liens and special assessments are adopted under Government Code Section 38773.5.

(g) The procedures set forth in this chapter are not exclusive and are in addition to the procedure for abatement which is conferred upon the city by Civil Code 3494, Code of Civil Procedure Section 731, Government Code Section 38773 or other lawful authority.

(h) Each person who violates a provision of this chapter is guilty of a misdemeanor and shall be punished as provided in section 1-302 of this code, unless, in the City's discretion, the violation is charged as an infraction or enforced through the administrative citation procedure set forth in chapter 1-9 of this code. The penalties provided for an infraction in section 1-302 of this code or an administrative citation in chapter 1-9 of this code are in addition to provisions of this code that provide for forfeiture of the permit.

Comment [A1]: Added for consistency with language in revised section 1-301(a).

(i) Use of this chapter is at the sole discretion of the city.

8-2102 Definitions.

(a) "Adjoining property" means a property which shares a common boundary with a subject property or a property that is directly across a public or private street or road from a subject property.

(b) "Code enforcement appeals board" or "board" shall mean the code enforcement appeals board as described in chapter 2-10.

(c) "Code enforcement officer" or "officer" shall mean the city employee or employees designated by the city manager to implement the provisions of this chapter.

(d) "Days" shall mean calendar days. In the event the last day of the specified time period falls on a Saturday, Sunday or federal holiday observed by the city, then the last day of the specified time period shall be the next business day.

(e) "Owner" shall mean the owner or owners of record of real property as shown on the latest county equalized assessment roll; the lessee, tenant or other person having control or possession of the property; the mortgagee under a recorded deed of trust; and any other person having a recorded beneficial or legal interest.

(f) "Public view" means the view from a public or private street or road which serves more than one property or from a public walkway.

(g) "Screened" means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation at least six feet above ground level, by a fence, wall, lattice, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof, as deemed appropriate by the planning services manager.

Comment [A2]: Definition added to be consistent with section 6-2302(d).

(h) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, street, road, avenue, lane, alley, court, place, square, curb or other similar surface improved, designed or ordinarily used for vehicular traffic, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. ~~a car, van, truck, mobile home, recreational vehicle, trailer, boat, aircraft, or motorcycle.~~

Comment [A3]: Definition revised to be consistent with section 6-2302(e).

8-2103 Other chapters of this municipal code.

Other chapters of this municipal code are subject to enforcement pursuant to the provisions of this chapter.

8-2104 Permit violations.

(a) All property improvements and other changes and land uses permitted under Title 6 of this code shall be maintained in accordance with those permits along with approved plans and conditions of approval. ~~Permit violations are subject to enforcement in accordance with this chapter.~~

(b) It is unlawful for any property owner to maintain his or her property in any manner that violates any condition of approval or other term or provision imposed in connection with the city's approval of some land use entitlement, whether temporary or permanent, including, for example, and without limitation, a rezone, variance, subdivision approval, land use permit, design review or hillside development permit.

Comment [cs4]: Moved from Chapter 1-3.

8-2105 Property violations.

It is unlawful for any owner to maintain his or her property in such manner that any of the conditions listed below are found to exist thereon, except as may be allowed by this municipal code. The code enforcement officer shall determine when any of the following conditions are property violations and substantially detract from the overall appearance of adjoining properties, and/or are detrimental to adjoining properties and their property values:

(a) General property violations. The following violations apply to all properties within the city regardless of their zoning and/or use:

(1) Substandard compliance with housing, health, and/or building codes;

(2) Vacant or partially destroyed building or structure that is not secured or is not being actively maintained and monitored;

(3) Building exterior, wall, roof, fence, or accessory structure that is deteriorated or in disrepair;

(4) Broken or missing exterior doors and/or windows;

(5) Used, damaged or discarded building materials, storage containers, furniture, household appliances, automotive parts, ~~or~~tools, machinery, mechanical apparatus or equipment, or junk or trash visible from public view or an adjoining property;

Comment [A5]: Moved from Chapter 6-23.

(6) Attractive nuisances, particularly to children, including neglected, abandoned, or unsafe household appliances, machinery, swimming pools, spas, ponds, or excavations;

(7) Construction equipment, materials, or machinery visible from public view or an adjoining property when stored on a property where there is no active building permit;

(8) Dead, decayed, diseased, or hazardous trees, shrubs, or weeds, or overgrown vegetation that pose a fire or other hazard to the public right-of-way and/or an adjoining property, except when such trees are subject to chapter 6-17; and/or

(9) Maintenance of property in a condition of deterioration or disrepair, in such a condition to be detrimental to the public health, safety, or general welfare, or in such a manner as to constitute a public nuisance.

(b) Residential property violations. The following violations apply to those properties that are zoned or otherwise legally used for residential purposes:

(1) Portable carport or other temporary structure not screened from public view or an adjoining property;

~~(2) Vehicle parked within public view and not on a paved or other surface installed for the purpose of parking or access;~~

Comment [A6]: Addressed in revised Chapter 6-23.

(2) Vehicle or other equipment pursuant to chapter 6-23; ~~and/or~~

~~(4) Stored vehicle not screened from public view or an adjoining property; and/or~~

(3) Household waste, recycling, or garden waste receptacles or other trash visible from public view except on the day before and the day of regularly scheduled pickup; and/or~~.~~

(4) Construction, repair, disassembly or service of an appliance; or any other mechanical or motorized apparatus or device of any kind for more than eight days per year, or between the hours of 10:00 pm and 7:00 am.

Comment [A7]: Moved from Chapter 6-23.

(c) Nonresidential property violations. The following violations apply to those properties that are zoned or otherwise legally used for nonresidential purposes:

(1) Accumulation of dirt, litter, or debris in vestibules, doorways, or adjoining sidewalks, passages, or breezeways of a building;

(2) Deteriorated off-street parking surfaces or structures or driveways;

(3) Graffiti or other unauthorized markings which remain on a building exterior, wall, fence, or other structure and which are visible from public view or an adjoining property;

(4) Unmaintained landscaping which is visible from public view or an adjoining property;

(5) Shopping cart removed from the business premises where it belongs; and/or

(6) Unmaintained or nonoperational lighting on the exterior of a building or within off-street parking areas.

8-2106 Declaration of public nuisance.

(a) All property found to be maintained in violation of any one or more of the provisions of this chapter is declared to be a public nuisance and shall be abated by removal, correction, demolition and/or repair pursuant to the procedures set forth herein. The procedures set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city regulations or abating public nuisances by all other remedies, including the issuance of administrative citations pursuant to chapter 1-9, through the commencement of a criminal or civil proceeding, or through other legally established procedures.

8-2107 Responsibility for conformance to codes and permits.

(a) Every owner is required to maintain his or her property in a manner that does not violate the provisions of this chapter, and such owner remains liable for any violation regardless of any contract or agreement with any third party regarding such property.

(b) To the extent allowed by law, the code enforcement officer may enter on such property at reasonable times to make inspections.

8-2108 ~~Notification of v~~Violation.

Comment [A8]: Revised to refer reader to Chapter 1-9, Administrative Citations. Remainder of section regarding issuing warning notices and notices of violation moved to Chapter 1-9 for clarity and convenience.

Whenever the code enforcement officer determines that a violation exists on a property pursuant to this chapter and that the violation does not pose an immediate hazard to the general welfare, health and safety, so as to require summary abatement pursuant to section 8-2109, below, the code enforcement officer may issue a notice of violation to the person responsible for the violation, followed by an administrative citation, pursuant to the procedures outlined in chapter 1-9 of this code.

~~(a)Warning notice. Whenever the code enforcement officer determines that a violation exists on a property pursuant this chapter and that the violation does not pose an immediate hazard to the general welfare, health and safety, the officer shall issue a warning notice to the owner. A warning notice shall be served in accordance with section 8-2109, and shall include, but not be limited to the following:~~

~~1. Description of the violation and applicable section or sections of this chapter or other applicable sections of this municipal code;~~
~~2. Requirements for abating the violation;~~
~~3. Reasonable time limit for abating the violation not to exceed twenty (20) days based on the type, severity and number of previous violations on the same property, unless the officer determines there are circumstances that warrant additional time for abatement; and~~

4. Consequences for not abating the violation within the time specified in the warning, including but not limited to the imposition of administrative penalties, administrative charges, incurring of abatement costs, issuance of administrative citations and/or other legal remedies available to the city.

(b) Notice and order. If the violation is not abated within the time limit specified in the warning, a written notice of violation shall be sent to the owner. Notice shall be served in accordance with section 8-2109, and shall include, but not be limited to the following:

1. Description of violation and applicable section or sections of this chapter;
2. Requirements for abating the violation;
3. Time limit for abating the violation not to exceed twenty (20) days based on the type, severity and number of previous violations on the same property, unless the code enforcement officer determines there are circumstances of hardship that warrant additional time for abatement;
4. Consequences of not abating the violation within the time specified in the notice;
5. Amount of the administrative charge owed the city pursuant to section 8-2114, the time limit not to exceed twenty (20) days to pay the charge, and the consequences of not paying the charge within the time specified in the notice; and
6. Process to appeal the notice of violation, including the amount of the appeal fee pursuant to section 8-2110.

(c) Hazardous conditions. If the code enforcement officer or other city employees designated by the city manager determines a violation to be an immediate danger to the general welfare, health and safety, the violation may be summarily abated without compliance with this chapter. Abatement may include, but is not limited to boarding of windows, doors and other openings, removal of junk and debris, and/or securing the perimeter of the property with fencing, gates or barricades to prevent further occurrences of the hazardous condition or conditions. The cost of the abatement as well as administrative charges shall be the responsibility of the owner of property where the violation occurred.

Comment [A9]: Replaced by new section 8-2109, "Summary abatement to protect health, safety and welfare."

8-2109 Service of notifications.

Comment [A10]: Moved to Chapter 1-9 along with the procedures for issuing warning notices and notices of violation.

Notices shall be served in one of the following methods:

A. The code enforcement officer may personally serve the notice on the owner. The notice shall become effective on the date of personal service.

B. The code enforcement officer may mail the notice by first class mail and certified mail, return receipt requested, to the owner at the address shown on the county's last property tax assessment rolls or to any other address known for the owner. The notice shall become effective on the date of the first class mailing.

C. The code enforcement officer may post the property where the violation occurs with the notice in a conspicuous place when the owner resides at an unknown address. A copy of the notice also shall be sent by first class mail to the subject property to the owner's attention. The notice shall become effective on the date of the posting of the property.

D. The failure of an owner to receive the notice shall not affect the validity of any proceedings taken under this chapter.

8-2109 Summary abatement to protect health, safety and welfare

(a) If the code enforcement officer or other city employees designated by the city manager determines a violation presents an immediate danger to the health and safety of person(s) or property or to the general welfare of the city unless immediately corrected, and that there is not time to seek a court order or administrative order granting the code enforcement officer permission to abate the violation, the violation may be summarily abated without compliance with this chapter. Abatement shall include only such actions as are required to alleviate those conditions that present the immediate health and/or safety concerns, and may include, without limitation boarding of windows, doors, and other openings; removal of junk and debris; and/or securing the perimeter of the property.

(b) The code enforcement officer shall document the health and and/or safety conditions that require immediate abatement; all corrective measures taken in the abatement; and the costs thereof, so that these costs may be recovered pursuant to this section 8-2111(c) of this chapter.

(c) If summary abatement is performed under this section, the city shall provide the party responsible for the violation with a post-abatement hearing to contest the validity of the summary abatement pursuant to the procedures for an appeal.

8-2110 Appeals.

Comment [A11]: Revised to refer reader to Chapter 1-9, Administrative Citations. Remainder of section regarding appeals moved to Chapter 1-9 for clarity and convenience.

A recipient of an administrative citation may appeal the citation and may request a hearing before the code enforcement appeals board pursuant to the procedure outlined in section 1-907 of this code. An appeal conducted pursuant to this section shall be in accordance with sections 1-908 – 1-910 of this code.

~~An owner who receives a notice of violation may appeal the notice and may request a hearing before the code enforcement appeals board as follows:~~

~~A. An appeal form shall be obtained from the code enforcement officer. The completed appeal form shall be filed with the officer within fourteen (14) days of the effective date of the notice of violation together with an appeal fee as established by resolution by the city council.~~

~~B. Only after the completed appeal form has been filed together with the appeal fee shall the code enforcement officer set the date for a hearing. The hearing shall be set for a date not less than fourteen (14) days or more than sixty (60) days after the officer received the request.~~

~~C. The appellant may request one continuance, but in no event shall the hearing be continued more than thirty (30) days after the date of the originally scheduled hearing unless the code enforcement officer finds circumstances of hardship warrant a longer continuance not to exceed ninety (90) days after the date of the originally scheduled hearing.~~

~~D. The appellant shall be notified by first class mail and certified mail, return receipt requested, of the date, time and place set for the hearing. Notice shall be sent at least ten (10) days prior to the date of the hearing. The notice shall include a statement that if the violation is found to be a public nuisance and the violation is not substantially abated, then the city may pursue~~

any and all legal and equitable remedies for the recovery of unpaid abatement costs and administrative charges. The notice shall be mailed to the appellant at the address provided on the completed appeal form. Failure of the appellant to receive notice shall not affect the validity of any proceedings taken under this chapter.

E. Any documentation, other than the notice of violation, which the code enforcement officer has submitted or will submit to the code enforcement appeals board shall be served on the appellant at least three (3) days before the hearing.

F. Failure of an owner to file an appeal in accordance with the provisions of this section shall be deemed to waive his or her right to an appeal hearing.

8-2111 Appeal hearing procedure.

Comment [A12]: Moved to Chapter 1-9 with of procedures for appeal.

A. No appeal hearing shall be held unless the appeal fee has been paid in accordance with section 8-2110.

B. Hearings by the code enforcement appeals board are informal and formal rules of evidence and discovery shall not apply.

C. The code enforcement officer and appellant shall be given the opportunity to testify and present evidence concerning the alleged violation and proposed correction of the violation.

D. The notice of violation and any additional report submitted by the code enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.

E. The code enforcement appeals board may continue a hearing to request additional information from the code enforcement officer and/or appellant and/or to conduct an inspection of the subject property prior to concluding the hearing.

F. The code enforcement appeals board may inspect the subject property prior to concluding the hearing provided that the appellant consents to the inspection, is given the notice of the date and time of the inspection, and is permitted to be present during the inspection. The board shall state for the record during the hearing the material facts observed and conclusions drawn from the inspection. The appellant shall be afforded an opportunity to rebut or explain the matters so stated by the board. If the subject property can be inspected from areas accessible to the general public or with the permission of other persons authorized to provide access to the property, then notice to and consent of the appellant is not required.

G. If the violation is non-conformance with a permit issued under Title 6, the code enforcement appeals board may continue the hearing and refer the violation to the body that issued the permit for additional information and/or recommendation, including the zoning administrator, design review commission, planning commission, or city council.

H. Failure of the appellant to appear at the hearing shall constitute a waiver of his or her right to an administrative hearing.

8-2112 Decision of the code enforcement appeals board.

Comment [A13]: Moved to Chapter 1-9 with rest of procedures for appeal.

~~A. After considering all of the testimony and evidence submitted during the hearing, the code enforcement appeals board shall adopt a resolution to uphold, modify or cancel the notice and order. The decision of the board is final. The resolution shall include the reasons for that decision which may be based on any or all of the following factors:~~

~~1. Duration of the violation;~~

~~2. Frequency, recurrence and/or number of related violations by the appellant;~~

~~3. Seriousness of the violation;~~

~~4. Good faith efforts of the appellant to correct the violation; and/or~~

~~5. Other factors as justice may require.~~

~~B. If the code enforcement appeals board determines the notice and order should be upheld, then the resolution shall include the action required to correct the violation and the date by which such action must be completed. The date of compliance shall be no more than sixty (60) days from the date of the board's decision. The resolution shall include a payment schedule for any unpaid administrative penalties and/or administrative charges. The resolution shall also include the consequences of failing to correct the violation, including the placement of liens and/or special assessments, and the right to judicial review pursuant to section 8-2113.~~

~~C. If the code enforcement appeals board determines the notice and order should be modified in terms of methods of abatement and/or time limit for compliance, then the resolution shall include the modified action to correct the violation and/or the date by which correction must be completed. The resolution shall include a payment schedule for any unpaid administrative penalties or administrative charges. The resolution shall also include the consequences of failing to correct the violation, including the placement of liens and/or special assessments, and the right to judicial review pursuant to section 8-2113.~~

~~D. The code enforcement appeals board may determine that the notice of violation should be canceled and all further actions related to this notice of violation shall be terminated.~~

~~8-2113 Right to judicial review.~~

Comment [A14]: Moved to Chapter 1-9 with rest of procedures for appeal.

~~The appellant may seek judicial review of the board's decision by filing a petition with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. The board's resolution shall contain a statement so advising the appellant of the time limit on seeking court review.~~

8-~~2114~~ 2111 Abatement by code enforcement officer.~~.~~

(a) If a violation is not abated within the time limit specified in the notice of violation,~~and order or, if appealed, in the resolution of the code enforcement appeals board,~~ the code enforcement officer may cause the abatement of the violation. The officer is hereby authorized to enter the subject property to abate the violation subject to the consent of the property owner or occupant to do so. If the officer is unable to get consent from the property owner or occupant, the officer

may enter the subject property to abate the violation pursuant to an abatement warrant issued pursuant to the procedures outlined in Sections 1822.50, et seq., the California Code of Civil Procedure. ~~The costs of abatement shall be billed to the property owner pursuant to section 8-2115.~~

(b) If a violation is abated by the city pursuant to this section, the costs of abatement shall be billed to the property owner pursuant to section 8-2112(c) of this chapter.

(c) The city may pursue any and all available legal remedies to collect unpaid abatement costs, including, but not limited to, those set forth in section 8-2113 of this chapter.

~~8-2115~~ 2112 Administrative penalties, administrative ~~charges~~ costs and abatement costs.

Comment [A15]: This section clarifies that administrative costs are charged at the time an administrative citation is issued rather than when a notice of violation is issued.

(a) Administrative penalties. If a violation is not abated within the time limit specified in the ~~warning~~ notice of violation and an administrative citation ~~notice and order~~ is issued, then the ~~notice and order~~citation shall include a penalty at the maximum amount allowed by law and established by city council resolution, including, but not limited to, the penalties contained in Chapter 1-3 and Chapter 1-9 of this code, exclusive of administrative costs~~charges~~.

(b) Administrative ~~charges~~costs.

(1) If a violation is not abated within the time limit specified in the ~~warning~~ notice of violation and ~~a notice and order~~ an administrative citation is issued, then the administrative citation may ~~notice and order shall~~ include a charge to recover the administrative costs for the issuance of the notice of violation and administrative citation~~and order~~ and other city activities related to the abatement of the violation. The amount of the charge shall be ~~established by city council resolution~~ based on an analysis of direct and indirect personnel costs (including attorney fees), costs of documenting the violation and the actual costs of preparing, printing and mailing the notice of violation and administrative citation. The administrative costs~~charge~~ shall become due and payable thirty (30) days of the effective date of the administrative citation~~notice and order~~.

(2) If an administrative penalty is not paid within the time limit specified in the administrative citation, an administrative cost may be added to the administrative penalty already due and owing to recover the administrative costs related to collecting the unpaid penalty. The amount of the charge shall be based on an analysis of direct and indirect personnel costs (including attorney fees) incurred to recover the penalty, including the costs of documenting the late payment, preparing, printing and mailing related notices and correspondence to the violator demanding payment and may include interest as provided by law.

Comment [A16]: Section added to allow for recovery of administrative costs associated with collecting administrative penalties.

(c) Abatement costs. If a violation is abated by the city pursuant to this chapter, the abatement costs, including incidental costs, shall be billed to the property owner and be due and payable within thirty (30) days of the date the billing is mailed to the property owner. The term "incidental costs" shall include, but not be limited to, direct and indirect personnel costs, attorney fees, costs incurred in documenting the violation and actual expenses and costs for the preparation of notices, specifications and contracts, for inspection of the abatement and for the printing and mailing of notices.

8-~~2116~~ 2113 Recovery of administrative penalties, administrative costs, ~~charges~~ and abatement costs.

(a) Cumulative remedies. At its discretion, the city may pursue any and all legal and equitable remedies for the recovery of administrative penalties, administrative ~~charges~~ costs and/or abatement costs owed to the city. Pursuit of one remedy does not preclude the pursuit of any other remedies ~~until the total of administrative and abatement charges have been recovered~~. Any property owner who fails to pay any abatement penalties, ~~costs or~~ administrative costs and/or abatement costs ~~charges~~ owed to the city shall be liable in any action brought by the city for its costs incurred in bringing such action~~securing payment of the delinquent amount~~. The city's collection costs may include, but are not limited to, those for personnel, materials, overhead, attorney's fees and any other city expenditures expended in the action ~~required~~ to collect the unpaid administrative penalties, administrative costs and/or abatement costs ~~or administrative charges~~.

(b) Liens; special assessments. The amount of any unpaid administrative penalties, administrative ~~charges~~ costs and/or abatement costs may be made a lien or special assessment on the real property on which the violation occurred.

(1) The code enforcement officer shall present a report on unpaid penalties, charges and/ or costs and a resolution of lien or special assessment to the city council.

(2) At least ten (10) days before the city council meeting at which the cost report and resolution of lien or special assessment are considered, the officer shall mail the owner a copy, together with a notice of the time and place of the council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any penalty~~, charge~~ and/or cost contained in the report. The report and notice shall also be posted conspicuously on the subject property.

(3) At the time fixed for hearing on the report of expenses, the council shall consider the report and protests or objections by the owner liable to be assessed for the penalties, ~~charges~~ and/or costs. The council may revise, correct or modify the report as it considers just. Thereafter, the council may confirm the report and approve the lien or special assessment. The owner shall be notified by mail of the council's action.

(4) The lien or special assessment shall attach when the officer records a certificate listing unpaid administrative penalties, administrative costs ~~charges~~ and/or abatement costs with the county recorder's office. The certificate shall specify the amount of the lien or special assessment, the street address, legal description, and assessor's parcel number of the parcel on which the lien or special assessment is imposed, and the name and address of the record owner of the parcel. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified above shall be recorded by the officer. The lien or special assessment may be foreclosed by an action brought by the city for a money judgment. Until the lien or special assessment is discharged, released or satisfied, interest shall apply at the maximum amount allowed by law.

8-~~2117~~2114 Abatement on recurrence.

When a violation previously abated in accordance with this chapter recurs within twelve (12) months of such abatement, no warning notice is required. The code enforcement officer shall send a notice of violation~~and order~~ to the property owner pursuant to section 1-903~~8-2108B~~, with the exception that the time limit for abating the violation shall not exceed ten (10) days from the effective date of the notice of violation~~and order~~. Such notice shall be served on the property owner in accordance with the provisions of section 1-905~~8-2109~~. ~~Appeals of such notices shall be in accordance with section 8-2110.~~

8-~~2118~~2115 Additional violations.

(a) Any property owner who ~~maintains any public nuisance pursuant to this chapter or who~~ violates any order of abatement pursuant to this chapter is guilty of an infraction or misdemeanor.

(b) Any person who removes or defaces any notice as required by this chapter is guilty of an infraction or misdemeanor.

(c) Any person who obstructs, impedes or interferes, or causes another to do so, with any abatement actions performed pursuant to this chapter is guilty of an infraction or misdemeanor.

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette Amending Chapter 8-21 of the Lafayette Municipal Code Entitled "Code Enforcement"	)	Ordinance No. 591

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Amendments. Chapter 8-21 of Title 8 of the Lafayette Municipal Code entitled "Code Enforcement" is hereby amended to read as follows:

"Chapter 8-21

CODE ENFORCEMENT

8-2101 Findings and determination.

The city council finds and determines as follows:

(a) Sections 8-2101 through 8-2115, inclusive, shall be known as the code enforcement ordinance.

(b) The purpose and intent of this chapter is to:

(1) Enhance and maintain the appearance of real property, both improved and unimproved, and by doing so, enhance and maintain the livability, appearance and economic well-being of the community;

(2) Ensure that property improvements and land uses permitted by the city pursuant to Title 6 are maintained in compliance with such permits;

(3) Utilize the sanctions and penalties of this chapter only after all reasonable efforts at resolution by educational and cooperative means have been exhausted, it being recognized that voluntary compliance is preferred over all other remedies; and

(4) Recover city costs for the abatement of violations.

(c) As described in this chapter, the use and abuse of real properties, whether improved or unimproved reasonably relate to the proper exercise of police power of the city to protect the health, safety and general welfare of the community.

(d) The abatement of continued violations impacts city resources, requires resources over and above the level of enforcement services normally provided, and constitutes a public nuisance the costs of which should be paid by the responsible property owners.

(e) This chapter is enacted under the authority of California Government Code Sections 36901 and 53069.4.

(f) The procedures set forth in this chapter for abatement, liens and special assessments are adopted under Government Code Section 38773.5.

(g) The procedures set forth in this chapter are not exclusive and are in addition to the procedure for abatement which is conferred upon the city by Civil Code 3494, Code of Civil Procedure Section 731, Government Code Section 38773 or other lawful authority.

(h) Each person who violates a provision of this chapter is guilty of a misdemeanor and shall be punished as provided in section 1-302 of this code, unless, in the City's discretion, the violation is charged as an infraction or enforced through the administrative citation procedure set forth in chapter 1-9 of this code. The penalties provided for an infraction in section 1-302 of this code or an administrative citation in chapter 1-9 of this code are in addition to provisions of this code that provide for forfeiture of the permit.

(i) Use of this chapter is at the sole discretion of the city.

8-2102 Definitions.

(a) "Adjoining property" means a property which shares a common boundary with a subject property or a property that is directly across a public or private street or road from a subject property.

(b) "Code enforcement appeals board" or "board" shall mean the code enforcement appeals board as described in chapter 2-10.

(c) "Code enforcement officer" or "officer" shall mean the city employee or employees designated by the city manager to implement the provisions of this chapter.

(d) "Days" shall mean calendar days. In the event the last day of the specified time period falls on a Saturday, Sunday or federal holiday observed by the city, then the last day of the specified time period shall be the next business day.

(e) "Owner" shall mean the owner or owners of record of real property as shown on the latest county equalized assessment roll; the lessee, tenant or other person having control or possession of the property; the mortgagee under a recorded deed of trust; and any other person having a recorded beneficial or legal interest.

(f) "Public view" means the view from a public or private street or road which serves more than one property or from a public walkway.

(g) "Screened" means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation at least six feet above ground level, by a fence, wall, lattice, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof, as deemed appropriate by the planning services manager.

(h) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, street, road, avenue, lane, alley, court, place, square, curb or other similar surface improved, designed or ordinarily used for vehicular traffic, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

8-2103 Other chapters of this municipal code.

Other chapters of this municipal code are subject to enforcement pursuant to the provisions of this chapter.

8-2104 Permit violations.

(a) All property improvements and other changes and land uses permitted under Title 6 of this code shall be maintained in accordance with those permits along with approved plans and conditions of approval.

(b) It is unlawful for any property owner to maintain his or her property in any manner that violates any condition of approval or other term or provision imposed in connection with the city's approval of some land use entitlement, whether temporary or permanent, including, for example, and without limitation, a rezone, variance, subdivision approval, land use permit, design review or hillside development permit.

8-2105 Property violations.

It is unlawful for any owner to maintain his or her property in such manner that any of the conditions listed below are found to exist thereon, except as may be allowed by this municipal code. The code enforcement officer shall determine when any of the following conditions are property violations and substantially detract from the overall appearance of adjoining properties, and/or are detrimental to adjoining properties and their property values:

(a) General property violations. The following violations apply to all properties within the city regardless of their zoning and/or use:

(1) Substandard compliance with housing, health, and/or building codes;

(2) Vacant or partially destroyed building or structure that is not secured or is not being actively maintained and monitored;

(3) Building exterior, wall, roof, fence, or accessory structure that is deteriorated or in disrepair;

(4) Broken or missing exterior doors and/or windows;

(5) Used, damaged or discarded building materials, storage containers, furniture, household appliances, automotive parts, tools, machinery, mechanical apparatus or equipment, or junk or trash visible from public view or an adjoining property;

(6) Attractive nuisances, particularly to children, including neglected, abandoned, or unsafe household appliances, machinery, swimming pools, spas, ponds, or excavations;

(7) Construction equipment, materials, or machinery visible from public view or an adjoining property when stored on a property where there is no active building permit;

(8) Dead, decayed, diseased, or hazardous trees, shrubs, or weeds, or overgrown vegetation that pose a fire or other hazard to the public right-of-way and/or an adjoining property, except when such trees are subject to chapter 6-17; and/or

(9) Maintenance of property in a condition of deterioration or disrepair, in such a condition to be detrimental to the public health, safety, or general welfare, or in such a manner as to constitute a public nuisance.

(b) Residential property violations. The following violations apply to those properties that are zoned or otherwise legally used for residential purposes:

(1) Portable carport or other temporary structure not screened from public view or an adjoining property;

(2) Vehicle or other equipment pursuant to chapter 6-23;

(3) Household waste, recycling, or garden waste receptacles or other trash visible from public view except on the day before and the day of regularly scheduled pickup; and/or

(4) Construction, repair, disassembly or service of an appliance; or any other mechanical or motorized apparatus or device of any kind for more than eight days per year, or between the hours of 10:00 pm and 7:00 am.

(c) Nonresidential property violations. The following violations apply to those properties that are zoned or otherwise legally used for nonresidential purposes:

(1) Accumulation of dirt, litter, or debris in vestibules, doorways, or adjoining sidewalks, passages, or breezeways of a building;

(2) Deteriorated off-street parking surfaces or structures or driveways;

(3) Graffiti or other unauthorized markings which remain on a building exterior, wall, fence, or other structure and which are visible from public view or an adjoining property;

(4) Unmaintained landscaping which is visible from public view or an adjoining property;

(5) Shopping cart removed from the business premises where it belongs; and/or

(6) Unmaintained or nonoperational lighting on the exterior of a building or within off-street parking areas.

8-2106 Declaration of public nuisance.

(a) All property found to be maintained in violation of any one or more of the provisions of this chapter is declared to be a public nuisance and shall be abated by removal, correction, demolition and/or repair pursuant to the procedures set forth herein. The procedures set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city regulations or abating public nuisances by all other remedies, including the issuance of administrative citations pursuant to chapter 1-9, through the commencement of a criminal or civil proceeding, or through other legally established procedures.

8-2107 Responsibility for conformance to codes and permits.

(a) Every owner is required to maintain his or her property in a manner that does not violate the provisions of this chapter, and such owner remains liable for any violation regardless of any contract or agreement with any third party regarding such property.

(b) To the extent allowed by law, the code enforcement officer may enter on such property at reasonable times to make inspections.

8-2108 Violation.

Whenever the code enforcement officer determines that a violation exists on a property pursuant to this chapter and that the violation does not pose an immediate hazard to the general welfare, health and safety, so as to require summary abatement pursuant to section 8-2109, below, the code enforcement officer may issue a notice of violation to the person responsible for the violation, followed by an administrative citation, pursuant to the procedures outlined in chapter 1-9 of this code.

8-2109 Summary abatement to protect health, safety and welfare

(a) If the code enforcement officer or other city employees designated by the city manager determines a violation presents an immediate danger to the health and safety of person(s) or property or to the general welfare of the city unless immediately corrected, and that there is not time to seek a court order or administrative order granting the code enforcement officer permission to abate the violation, the violation may be summarily abated without compliance with this chapter. Abatement shall include only such actions as are required to alleviate those conditions that present the immediate health and/or safety concerns, and may include, without limitation boarding of windows, doors, and other openings; removal of junk and debris; and/or securing the perimeter of the property.

(b) The code enforcement officer shall document the health and and/or safety conditions that require immediate abatement; all corrective measures taken in the abatement; and the costs thereof, so that these costs may be recovered pursuant to this section 8-2111(c) of this chapter.

(c) If summary abatement is performed under this section, the city shall provide the party responsible for the violation with a post-abatement hearing to contest the validity of the summary abatement pursuant to the procedures for an appeal.

8-2110 Appeals.

A recipient of an administrative citation may appeal the citation and may request a hearing before the code enforcement appeals board pursuant to the procedure outlined in section 1-907 of this code. An appeal conducted pursuant to this section shall be in accordance with sections 1-908 – 1-910 of this code.

8-2111 Abatement by code enforcement officer.

(a) If a violation is not abated within the time limit specified in the notice of violation, the code enforcement officer may cause the abatement of the violation. The officer is hereby authorized to enter the subject property to abate the violation subject to the consent of the property owner or occupant to do so. If the officer is unable to get consent from the property owner or occupant, the officer may enter the subject property to abate the violation pursuant to an abatement warrant issued pursuant to the procedures outlined in Sections 1822.50, *et seq.*, the California Code of Civil Procedure.

(b) If a violation is abated by the city pursuant to this section, the costs of abatement shall be billed to the property owner pursuant to section 8-2112(c) of this chapter.

(c) The city may pursue any and all available legal remedies to collect unpaid abatement costs, including, but not limited to, those set forth in section 8-2113 of this chapter.

8-2112 Administrative penalties, administrative costs and abatement costs.

(a) Administrative penalties. If a violation is not abated within the time limit specified in the notice of violation and an administrative citation is issued, then the citation shall include a penalty at the maximum amount allowed by law and established by city council resolution, including, but not limited to, the penalties contained in Chapter 1-3 and Chapter 1-9 of this code, exclusive of administrative costs.

(b) Administrative costs.

(1) If a violation is not abated within the time limit specified in the notice of violation and an administrative citation is issued, then the administrative citation may include a charge to recover the administrative costs for the issuance of the notice of violation and administrative citation and other city activities related to the abatement of the violation. The amount of the charge shall be based on an analysis of direct and indirect personnel costs (including attorney fees), costs of documenting the violation and the actual costs of preparing, printing and mailing the notice of violation and administrative citation. The administrative costs shall become due and payable thirty (30) days of the effective date of the administrative citation.

(2) If an administrative penalty is not paid within the time limit specified in the administrative citation, an administrative cost may be added to the administrative penalty already due and owing to recover the administrative costs related to collecting the unpaid penalty. The amount of the charge shall be based on an analysis of direct and indirect personnel costs (including attorney fees) incurred to recover the penalty, including the costs of documenting the late payment, preparing, printing and mailing related notices and correspondence to the violator demanding payment and may include interest as provided by law.

(c) Abatement costs. If a violation is abated by the city pursuant to this chapter, the abatement costs, including incidental costs, shall be billed to the property owner and be due and payable within thirty (30) days of the date the billing is mailed to the property owner. The term "incidental costs" shall include, but not be limited to, direct and indirect personnel costs, attorney fees, costs incurred in documenting the violation and actual expenses and costs for the preparation of notices, specifications and contracts, for inspection of the abatement and for the printing and mailing of notices.

8-2113 Recovery of administrative penalties, administrative costs and abatement costs.

(a) Cumulative remedies. At its discretion, the city may pursue any and all legal and equitable remedies for the recovery of administrative penalties, administrative costs and/or abatement costs owed to the city. Pursuit of one remedy does not preclude the pursuit of any other remedies. Any property owner who fails to pay any abatement penalties, administrative costs and/or abatement costs owed to the city shall be liable in any action brought by the city for its costs incurred in bringing such action. The city's collection costs may include, but are not limited to, those for personnel, materials, overhead, attorney's fees and any other city expenditures expended in the action to collect the unpaid administrative penalties, administrative costs and/or abatement costs.

(b) Liens; special assessments. The amount of any unpaid administrative penalties, administrative costs and/or abatement costs may be made a lien or special assessment on the real property on which the violation occurred.

(1) The code enforcement officer shall present a report on unpaid penalties, charges and/ or costs and a resolution of lien or special assessment to the city council.

(2) At least ten (10) days before the city council meeting at which the cost report and resolution of lien or special assessment are considered, the officer shall mail the owner a copy, together with a notice of the time and place of the council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any penalty and/or cost contained in the report. The report and notice shall also be posted conspicuously on the subject property.

(3) At the time fixed for hearing on the report of expenses, the council shall consider the report and protests or objections by the owner liable to be assessed for the penalties, and/or costs. The council may revise, correct or modify the report as it considers just. Thereafter, the council may confirm the report and approve the lien or special assessment. The owner shall be notified by mail of the council's action.

(4) The lien or special assessment shall attach when the officer records a certificate listing unpaid administrative penalties, administrative costs and/or abatement costs with the county recorder's office. The certificate shall specify the amount of the lien or special assessment, the street address, legal description, and assessor's parcel number of the parcel on which the lien or special assessment is imposed, and the name and address of the record owner of the parcel. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified above shall be recorded by the officer. The lien or special assessment may be foreclosed by an action brought by the city for a money judgment. Until the lien or special assessment is discharged, released or satisfied, interest shall apply at the maximum amount allowed by law.

8-2114 Abatement on recurrence.

When a violation previously abated in accordance with this chapter recurs within twelve (12) months of such abatement, no warning notice is required. The code enforcement officer shall send a notice of violation to the property owner pursuant to section 1-903, with the exception that the time limit for abating the violation shall not exceed ten (10) days from the effective date of the notice of violation. Such notice shall be served on the property owner in accordance with the provisions of section 1-905.

8-2115 Additional violations.

(a) Any property owner who violates any order of abatement pursuant to this chapter is guilty of an infraction or misdemeanor.

(b) Any person who removes or defaces any notice as required by this chapter is guilty of an infraction or misdemeanor.

(c) Any person who obstructs, impedes or interferes, or causes another to do so, with any abatement actions performed pursuant to this chapter is guilty of an infraction or misdemeanor."

Section 2. CEQA. The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

Section 3. Notice of Exemption. The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this Ordinance.

Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections,

subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on September 14, 2009 and was adopted and ordered published at a meeting of the City Council held on _____, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
Don Tatzin, Mayor

as an "if/then" statement with regard to the height, as well. He would also like to pass along a comment to the Design Review Committee that a great job has been done in suggesting improvements and changes. He would encourage that to be continued in regard to heights and massing.

Commissioner Ateljevich said that she would like to add a condition that if one of the numbered Madrone or oak trees fail within 5 years of construction that they would be replaced.

Ms. Warmoth asked if this would be based on the protection ratio stated in the geoprotection ordinance.

Commissioner Ateljevich said that it would.

Chair Lovitt asked for clarification from the Staff as to their interpretation of the Planning Commission's request for modifications.

Ms. Warmoth said that Item B, referring to the preservation of the Madrones and two oak trees, will be broken into two separate items so that if an arborist's study determines that the grade has to be changed, the finished floor would be allowed to be raised in that area to grade adjacent to the garage, where trees 101 and 102 are.

Chair Lovitt asked for the second if/then statement.

Ms. Warmoth said that the statement would be based on a change in the survey topography so that the lower exterior building wall could meet the natural grade lower down the hillside, which would change the overall height of the building as currently measured.

Chair Lovitt stated that a motion has been given to adopt the resolution as amended. He asked for a second and this was given by Vice Chair Chastain. The motion was carried by unanimous consent. (6-0-0) Chair Lovitt concluded that there is a 14-day appeal period.

7. NEW PUBLIC HEARING

A. **ZT04-09/ORDINANCE 586 CITY OF LAFAYETTE (APPLICANT)**: City-initiated zoning text amendment to Chapter 6-23, Outdoor Storage and Repairs, to (1) add or clarify definitions (§6-2302), (2) eliminate redundancies with other Lafayette Municipal Code chapters, and (3) identify permitted (§6-2303) and prohibited activities (§6-2304) and those activities requiring a permit (§6-2305).

Chair Lovitt asked for a Staff report.

Christine Sinnette introduced herself, as well as Mark Robbins. She explained that Mr. Robbins and the Planning Division staff have been administering various Municipal Code chapters for several years related to property maintenance, code enforcement, outdoor storage and citations. They have found that some revisions are necessary to correct inconsistencies and clarify definitions and procedures.

The hearing body for Municipal Code revisions is the City Council, but some of the revisions are related to Chapter 6-23, Outdoor Storage, which is part of the zooming ordinance. For this reason the Planning Commission needs to look at it and render a recommendation to the City Council.

Referring all to Attachment 2 of the Staff report, she notes that it contains a version that shows the revisions, as well as comments explaining the revision reasons. Some of the revisions include new or revised definitions for vehicles and front yard areas, a better distinction between passenger vehicles and recreational vehicles, including boats and trailers and a list of permitted or prohibited activities as they relate to the parking and storing of vehicles by type, and the requirement for a land use permit to park or keep vehicles on a vacant or unimproved piece of land.

Ms. Sinnette continued, stating that as noted in the Staff report, the zoning text amendment is consistent with the General Plan and complies with CEQA. The public hearing was duly noticed and as of this time, no one has contacted Staff regarding the amendment. Staff is therefore recommending that the Planning Commission adopt

the resolution in the packet, which recommends that the City Council adopts the ordinance to amend Chapter 6-23.

Chair Lovitt asked if there were any questions for staff.

Commissioner Ateljevich said that she does not like it being called "parking, storage, and repairs." She explained that storage for most people is a storage shed, and is not restricted to vehicular storage, as the ordinance seems to be written. As they have been in a process for years of trying to amend the regulations on storage sheds and the like, she finds it confusing to not have it identified as vehicular storage.

She continued, noting on the attachment it says "screened means shielding, concealed and substantially hidden from public view or a combination thereof as deemed appropriate.... at an elevation of up to 6 feet above ground level..." She said that in reading that it seems as though if it is above 6 feet it does not have to be concealed.

Ms. Sinnette confirmed that Commissioner Ateljevich was reading the attachment correctly. She explained that a typical example of this would be a standard single-family home where someone has an RV and it is parked behind their standard fence. Six feet is the maximum height of a structure at property line as well as within a setback, so if they were to require it to be higher, a variance would be needed.

Commissioner Ateljevich stated that the storage sheds that people purchase are often 10 or 12 feet.

Ms. Sinnette stated that most people who purchase an RV do not park them within a structure. If they did build such a structure, it would be subject to its own set of zoning regulations, regardless of what the structure is being used for. The area in question was written to minimize the potential impact if people parked those vehicles for storage.

Commissioner Maggio suggested that maybe a reference could be written that would direct the reader to look in another area if the storage being referred to is a storage shed.

Commissioner Maggio then asked about construction vehicles, as some contractors try to keep those vehicles at their homes.

Ms. Sinnette directed all to 6-2303(1), which addresses typical passenger cars versus RVs. This would include sport utility vehicles and trucks. In looking at 1(e), she read that the vehicle is rated for a maximum payload of one ton or less. The idea is that if the vehicle is bigger than a ton of payload, it is probably a commercial vehicle.

Commissioner Maggio asked about where a small Bobcat vehicle would fall under this.

Ms. Sinnette stated that such a Bobcat is not considered a vehicle in these terms.

Commissioner Maggio suggested that something should be mentioned under prohibited activities, as this has been a problem in the past.

Ms. Sinnette said that Chapter 6-23 included vehicle storage, other mechanical equipment, construction storage, and previously it was somewhat confusing as there was a little overlap with the current code enforcement Chapter, 8-21. To correct this, Chapter 6-23 is now just vehicles. Things such as construction equipment or construction debris is addressed in Chapter 8-21, or is being revised to make sure that it is covered there.

Referring all to Section 2304, "prohibited activities," 1(a), it currently mentions mechanical apparatus, appliances and devices. That has now been removed as it has been mentioned in 8-21.

Commissioner Curtin-Tinley moved to Page 10, 6-2304(1)(b), which is an area referring to those who conduct construction and repairs in front yards and side yards. She noted that the provision reads that people may not repair, construct or assemble any vehicle more than eight days per year or in the evening hours. She asked how the monitoring of eight days a year is done.

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Mark Robbins said that it is anticipated that if that occurs, neighbors would report it. If a situation rises to a nuisance issue that would be documented by the police and it would be forwarded to him. Mr. Robbins would then do surveillance on it.

Commissioner Curtin-Tinley confirmed with Mr. Robbins that documentation would be needed that a vehicle was being repaired more than eight days per year. She then commented that the restriction only seems to be in the front yard area. She asked for more clarification on how that is designated. She has noted in her own neighborhood vehicles that jut out from a side yard into the front.

Mr. Robbins said that there is language for such situations and they want those to be screened appropriately. If they are on the side, they would refer back to the definition of screens.

Commissioner Mitchell said that he has noted where some residents have graveled off sections of their yards and parked cars perpendicular to the street. He asked if that is a violation of the law and, further, if there is a differentiation between parallel and perpendicular parking.

Mr. Robbins explained that an issue like this occurring is one of the reasons that they wanted to revise this ordinance. The new ordinance will address this in the placing, keeping and parking of vehicles on a driveway, a surface which is not necessarily parallel to the street, but connects to a covered parking structure. The problem will be remedied with this new language.

Ms. Sinnette said that perpendicular and parallel is not being defined, but the assumption would be that parallel parking would not work. Parking in a driveway, connected to a covered parking structure, that accesses a street would generally force the resident to park perpendicular.

Vice Chair Chastain asked how this ordinance would work with circular driveways that were constructed in front yards, but do not connect to a parking covered structure.

Ms. Sinnette said in looking at 2303(1)(b), it notes that if there is a paved surface that has direct access to a driveway or easement, it is acceptable.

Chair Lovitt asked for additional comments for Staff. As there were none, he opened the floor to the public. There were no public comments. Chair Lovitt moved the discussion back to the Planning Commission. He asked Staff to confirm the changes that are to occur.

Ms. Sinnette said that the title will now be "Parking, Vehicle Storage and Repairs." Under 2302(d), instead of "at an elevation up to six feet," it will read "at least six feet high." Staff will consider if they need to have a reference for structures referring to another section of the zoning ordinance. They will also make sure that construction vehicles are addressed somewhere within the ordinance.

Commissioner Ateljevich stated that with the changes listed by Ms. Sinnette, she would recommend that the ordinance be sent to the City Council and that the resolution be approved.

Chair Lovitt asked for a second. This was given by Commissioner Curtin-Tinley and was carried with unanimous consent. (6-0-0)

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BEFORE THE PLANNING COMMISSION OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the Planning Commission)
of the City of Lafayette Recommending) Resolution 2009-11
Amending Chapter 6-23 of the Lafayette)
Municipal Code ("ZT04-09"))

WHEREAS, the City desires to amend Chapter 6-23, Outdoor Storage and Repairs, of the Lafayette Municipal Code ("LMC") to (1) add or clarify definitions, (2) eliminate redundancies with other LMC chapters, and (3) identify permitted and prohibited activities and those activities requiring a permit ("ZT04-09").

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA") the City determined with certainty that the amendments described in ZT04-09 will not have an adverse significant effect on the environment, and are therefore not subject to the requirements of the California Environmental Quality Act (§15061(b)(3), CEQA Guidelines).

WHEREAS, on July 2, 2009, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing on ZT04-09 pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT04-09 were heard and ZT04-09 was fully studied; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made in this Resolution, the Planning Commission hereby recommends that the City Council approve ZT04-09 amending Chapter 6-23, LMC, as described in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the Planning Commission based its decision is as follows: City Clerk, City of Lafayette, 3675 Mt. Diablo Blvd. #210, Lafayette, California 94549.

PASSED AND ADOPTED by the Planning Commission of the City of Lafayette at a regular meeting on July 2, 2009, by the following vote:

AYES: Lovitt, Chastain, Ateljevich, Curtin-Tinley, Maggio, Mitchell
NOES: None
ABSENT: Humann
ABSTAIN:

ATTEST:

Niroop K. Srivatsa
Planning and Building Services Manager

APPROVED:

Will Lovitt
Chair, Lafayette Planning Commission

EXHIBIT "A"

AMENDMENTS TO CHAPTER 6-23
OF THE CITY OF LAFAYETTE MUNICIPAL CODE

Chapter 6-23 PARKING, STORAGE AND REPAIRS*

6-2301 Applicability.
6-2302 Definitions.
6-2303 Permitted activities.
6-2304 Prohibited activities.
6-2305 Parking on vacant or unimproved lot subject to use permit.
6-2306 Enforcement.

* Prior ordinance history: Ords. 41, 45 and 461.

6-2301 Applicability.

This chapter shall apply to any parcel of land which is legally used or zoned for residential purposes or is vacant and unimproved, irrespective of the zoning. (Ord. 560 § 6 (part), 2006)

6-2302 Definitions.

(a) Adjoining property" means a property which shares a common boundary with a subject property or a property that is directly across a public or private street or road from a subject property.

(b) Front yard area", means an open area extending across the front of a lot, measured from the front property line or access easement, whichever is lesser, toward the rear of the lot to the nearest line of the primary residence.

(c) "Public view" means the view from a public or private street or road which serves more than one property or from a public walkway or trail.

(d) "Screened" means shielded, concealed and substantially hidden from public view or adjoining property, at an elevation up to six feet above ground level, by a fence, wall, lattice, hedge, berm, or similar structure, architectural or landscape feature, or combination thereof, as deemed appropriate by the planning services manager.

(e) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, street, road, avenue, lane, alley, court, place, square, curb or other similar surface improved, designed or ordinarily used for vehicular traffic, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

6-2303 Permitted activities.

1. Placing, parking, or keeping of a registered and fully operable car(s), van(s), truck(s), sport utility vehicle(s) (SUV) and motorcycle(s) is a permitted use on occupied lots, subject to the following conditions:

   (a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot, or guest thereof;
   (b) Said vehicle(s) is parked on a paved or similarly surfaced area that is designed and intended for the purpose of parking vehicles, and that is connected to a driveway that has direct access from a public or private road or access easement;
   (c) Said vehicle(s) is not parked in the front yard area unless parked on a driveway that connects to covered parking;
   (d) Said vehicle(s) is not used for living or sleeping purposes; and
   (e) Said vehicle(s) is rated for a maximum payload of one ton or less.

2. Placing, parking or keeping of registered and fully operable recreational vehicle(s), trailer(s) (e.g., for a boat, cargo, debris, horse, etc.), boat(s), or aircraft is a permitted use on occupied lots subject to the following conditions:

   (a) Said vehicle(s) is owned by or registered to the owner or occupant of the lot;
   (b) Said vehicle(s) is screened from public view and adjoining property;
   (c) Said vehicle(s) is not parked in the front yard area; and
   (d) Said vehicle(s) is not used for living or sleeping purposes.

6-2304 Prohibited activities.

1. No person shall engage in any of the following activities, unless the activity is fully screened from public view or an adjoining property:

   (a) Place, park, keep, or allow to remain for more than 96 consecutive hours a disabled or inoperable vehicle or part(s) of a vehicle, or materials used in the repair, servicing, construction or assembly of vehicles;
   (b) Construct, repair, disassemble or service any vehicle more than eight days per year, or between the hours of 9:00 p.m. and 7:00 a.m. of any day; and/or
   (c) Place, park, keep, or allow to remain any recreational vehicle, boat, aircraft, trailer (e.g., for a boat, cargo, debris, horse, etc.) either for more than 36 consecutive hours, or intermittently for periods exceeding 72 hours total in any 30-day period.

2. No person shall place, park or keep a vehicle(s) on a vacant or unimproved lot unless a land use permit is obtained pursuant to section 6-2305.

3. No person shall use any vehicle for living or sleeping purposes.

6-2305 Parking on vacant or unimproved lot subject to use permit.

1. The purpose of this section is to prevent owners of vacant or unimproved lots from storing vehicles on those lots, and to implement the Lafayette general plan which envisions maintaining the semi-rural character of the city. This section is intended to:

   (a) Protect the health and welfare of residential neighborhoods;
   (b) Prevent nuisance situations that can change the nature of a residential neighborhood;
   (c) Prevent potential safety hazards to pedestrians and other vehicles caused by the unexpected ingress and egress of vehicles from vacant or unimproved lots; and
   (c) Minimize the aesthetic and visual impacts of storing vehicles on vacant or unimproved lots.

2. A land use permit is required to place, park, or keep a vehicle(s) on a vacant or unimproved lot, irrespective of the land use district in which the land is located, as follows:

   a. An application for a land use permit shall be submitted to the zoning administrator accompanied by the required fee as established by resolution of the city council;
   b. If the zoning administrator finds that the vehicle(s) is owned by or registered to the owner of the lot; is not used for living purposes on the lot; is screened from public view; will not create a safety hazard as a result of the ingress and egress of the vehicle onto the lot; and that the proposed storage of the vehicle meets the findings required for a land use permit set forth in Section 6-215 of this code, the zoning administrator may issue a land use permit without the requirement for a public hearing.
   c. If the zoning administrator determines that a public hearing is necessary to address potential impacts of the permit, written notice of an application shall be provided as prescribed in section 6-211(b) of this code.
   d. The zoning administrator may refer the application to the planning commission for review and action.
   e. The hearing authority may approve, conditionally approve or deny the application based on its consideration of the factors outlined in section (2)(b) above, and the purposes and intent of this Section.
   f. The decision of the hearing authority is subject to the right of appeal in the manner as set forth in Chapter 6-2, Article 3

6-2306 Enforcement.

Engaging in any activity prohibited in this chapter shall be a violation of this chapter and may be subject to enforcement in accordance with Chapters 1-9 and/or 8-21 of this code, in addition to all other legal remedies, criminal or civil, available to the city to address a violation of this code